



# Judiciary and Courts (Scotland) Act 2008

## 2008 asp 6

### PART 2

#### THE JUDICIARY

### CHAPTER 3

#### JUDICIAL APPOINTMENTS

##### *Judicial Appointments Board for Scotland*

## **9 The Judicial Appointments Board for Scotland**

- (1) There is established a body to be known as the Judicial Appointments Board for Scotland (referred to in this Chapter as “the Board”).
- (2) The functions of the Board are—
  - (a) to recommend to members of the Scottish Executive individuals for appointment to judicial offices within the Board's remit, and
  - (b) to provide advice to members of the Scottish Executive in connection with such appointments.
- (3) In carrying out its functions, the Board is not to be subject to the direction or control of any member of the Scottish Executive or any other person.
- (4) Schedule 1 makes further provision about the Board.

## **10 Judicial offices within the Board's remit**

- (1) The judicial offices within the Board's remit are—
  - (a) the office of judge of the Court of Session,
  - (b) the office of Chairman of the Scottish Land Court,
  - (c) the office of temporary judge (except in any case where the individual to be appointed to the office holds or has held one of the offices mentioned in subsection (2)),

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- (d) the office of sheriff principal,
  - (e) the office of sheriff,
  - (f) the office of part-time sheriff, <sup>F1</sup>...
  - [<sup>F2</sup>(fza) the office of summary sheriff,
  - (fzb) the office of part-time summary sheriff,]
  - [<sup>F3</sup>(fa) the positions within the Scottish Tribunals mentioned in subsection (2A), and]
  - (g) such other judicial offices (whether full-time, part-time or temporary) as the Scottish Ministers may by order specify.
- (2) The offices referred to in subsection (1)(c) are—
- (a) the office of judge of the European Court,
  - (b) the office of judge of the European Court of Human Rights,
  - (c) the office of Chairman of the Scottish Land Court,
  - (d) the office of sheriff principal, and
  - (e) the office of sheriff.
- [<sup>F4</sup>(2A) The positions within the Scottish Tribunals are—
- (a) Vice-President of the Upper Tribunal, if to be appointed under section 26(1) of the Tribunals (Scotland) Act 2014,
  - (b) Chamber President in the First-tier Tribunal, if to be appointed under section 22(1) of that Act,
  - (c) Deputy Chamber President in the First-tier Tribunal, if to be appointed under the relevant provisions of schedule 4 to that Act,
  - (d) ordinary member or legal member of the First-tier Tribunal or the Upper Tribunal, if to be appointed under the relevant provisions of schedule 3 or (as the case may be) schedule 5 to that Act.]
- (3) The Scottish Ministers may specify a judicial office under subsection (1)(g) only if the First Minister has, or the Scottish Ministers have, the function of making appointments to the office, or of nominating or recommending individuals for appointment to the office.
- (4) In subsection (1)(g), “judicial office ”means—
- (a) the office of judge of any court,
  - (b) the office of member of any tribunal, or
  - (c) any other office, or appointment, consisting of functions of a judicial nature.

#### Textual Amendments

- F1** Word in s. 10(1) repealed (1.4.2015) by Tribunals (Scotland) Act 2014 (asp 10), s. 83(2), **Sch. 9 para. 12(2)(a)** (with Sch. 9 para. 8); S.S.I. 2015/116, art. 2
- F2** S. 10(1)(fza)(fzb) inserted (1.4.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 9(3)**; S.S.I. 2015/77, art. 2(2)(3), Sch.
- F3** S. 10(1)(fa) inserted (1.4.2015) by Tribunals (Scotland) Act 2014 (asp 10), s. 83(2), **Sch. 9 para. 12(2)(b)** (with Sch. 9 para. 8); S.S.I. 2015/116, art. 2
- F4** S. 10(2A) inserted (1.4.2015) by Tribunals (Scotland) Act 2014 (asp 10), s. 83(2), **Sch. 9 para. 12(2)(c)** (with Sch. 9 para. 8); S.S.I. 2015/116, art. 2

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## **11 Recommendations of the Board**

- (1) The relevant Minister may—
  - (a) appoint an individual to a judicial office within the Board's remit, or
  - (b) nominate or recommend an individual for appointment to such an office, only if the Board has recommended the individual for appointment to the office.
- (2) Subsection (3) applies where—
  - (a) the Board has recommended an individual for appointment, and
  - (b) the relevant Minister has decided not to accept the recommendation.
- (3) The relevant Minister must give the Board notice of the decision.
- (4) The notice must include the reasons for the decision.
- (5) On receipt of the notice, the Board must—
  - (a) reconsider its recommendation, and
  - (b) make a further recommendation (whether of the same or a different individual).
- (6) In this section references to the relevant Minister are—
  - (a) where the First Minister has the function of making appointments to the judicial office concerned, or nominating or recommending individuals for appointment to the office, references to the First Minister,
  - (b) where the Scottish Ministers have that function, references to the Scottish Ministers.

## **12 Selection criteria**

- (1) This section applies where the Board is selecting an individual to be recommended by it for appointment.
- (2) Selection must be solely on merit.
- (3) The Board may select an individual only if it is satisfied that the individual is of good character.

## **13 Assessment of legal knowledge, skills and competence**

- (1) Only the judicial and legal members of the Board may take part in any assessment by the Board of an individual's—
  - (a) knowledge of the law, or
  - (b) skills and competence in the interpretation and application of the law.
- (2) Subsection (1) does not prevent a member of the Board from taking part in a decision of the Board as to whether to recommend an individual for appointment to a judicial office.

## **14 Encouragement of diversity**

- (1) In carrying out its functions, the Board must have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to a judicial office.

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(2) Subsection (1) is subject to section 12.

## **15 Guidance**

- (1) The Scottish Ministers may issue guidance to the Board as to the procedures to be followed by it in the carrying out of its functions.
- (2) The Lord President may issue guidance to the Board as to the procedures to be followed by it in the carrying out of its functions.
- (3) Guidance issued under subsection (1) or (2) may, in particular, relate to the manner in which the Board is to publicise vacancies and identify candidates for any appointment.
- (4) In carrying out its functions, the Board must have regard to any guidance issued under this section.
- (5) The Scottish Ministers must publish any guidance issued under subsection (1).
- (6) The Lord President must publish any guidance issued under subsection (2).

## **16 Guidance: procedure**

- (1) Before issuing any guidance under section 15(1) or (2), the Scottish Ministers or, as the case may be, the Lord President must lay a draft of the proposed guidance before the Scottish Parliament.
- (2) The Scottish Ministers or, as the case may be, the Lord President must not issue the guidance before the expiry of the period of 21 days beginning with the day on which the draft of it is laid before the Parliament under subsection (1).
- (3) If, during that period, the Parliament by resolution makes any recommendations in relation to the draft guidance, the Scottish Ministers or, as the case may be, the Lord President must have regard to those recommendations.
- (4) The Scottish Ministers must, before laying a draft of proposed guidance before the Parliament under subsection (1), consult the Lord President and the Board on the draft.
- (5) The Lord President must, before laying a draft of proposed guidance before the Parliament under subsection (1), consult the Scottish Ministers and the Board on the draft.
- (6) In calculating a period of 21 days for the purposes of subsection (2), no account is to be taken of any time during which the Parliament is—
  - (a) dissolved, or
  - (b) in recess for more than 4 days.

## **17 Confidentiality of information**

- (1) A person (whether or not a member of the Board or its staff) who has provided or obtained confidential information in connection with the carrying out of the Board's functions must not disclose the information unless the disclosure is authorised.
- (2) Information is confidential for the purposes of subsection (1) if it relates to an identified or identifiable individual.

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- (3) Disclosure of information is authorised for the purposes of subsection (1) only so far as it is—
  - (a) made with the consent of the individual to whom the information relates,
  - (b) necessary for the purposes of the carrying out by the Board of its functions,
  - (c) necessary for the purposes of the carrying out by a member of the Scottish Executive of a function of appointing an individual to a judicial office within the Board's remit, or nominating or recommending an individual for appointment to such an office, or
  - (d) required for the purposes of any legal proceedings, whether criminal or civil, (including for the purposes of the investigation of any offence or suspected offence).
- (4) For the purposes of this section, an opinion or other information given by one identified or identifiable individual about another is to be treated as information that relates to both individuals.
- (5) This section does not prevent the disclosure of information which is already, or has previously been, in the public domain.
- (6) Any disclosure of information in contravention of this section which causes loss or damage to the individual to whom the information relates is actionable at the instance of that individual.

## **18 Annual report**

- (1) As soon as practicable after the end of each year, the Board must—
  - (a) prepare and publish a report on the carrying out of its functions during that year, and
  - (b) send a copy of the report to the Scottish Ministers.
- (2) The Scottish Ministers must lay before the Scottish Parliament a copy of each report sent to them by the Board under subsection (1)(b).

*Lord President and Lord Justice Clerk*

## **19 Appointment**

- (1) This section applies where a vacancy arises, or is expected to arise, in the office of Lord President or the office of Lord Justice Clerk.
- (2) The First Minister must establish a panel in accordance with schedule 2.
- (3) The function of the panel is to recommend to the First Minister individuals who are suitable for appointment to fill the vacancy.
- (4) For the purposes of section 95(2) of the Scotland Act 1998 (c. 46), the First Minister must not nominate any individual for appointment to fill the vacancy until the panel has made its recommendation under subsection (3).
- (5) In deciding whom to nominate for the purposes of that section, the First Minister must have regard to the panel's recommendation.

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## 20 Selection criteria

- (1) This section applies where a panel established under section 19(2) is selecting an individual to be recommended by it as suitable for appointment.
- (2) Selection must be solely on merit.
- (3) The panel may select an individual only if it is satisfied that the individual is of good character.

*<sup>F5</sup>Other Court of Session judges*

### Textual Amendments

- F5** Ss. 20A-20G and preceding cross-heading substituted for ss. 21-23 (1.4.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), **ss. 123**, 138(2); S.S.I. 2015/77, art. 2(2)(3), Sch.

## 20A Qualification of certain individuals for appointment as Court of Session judge

- (1) An individual is qualified for appointment as a judge of the Court of Session if the individual—
  - (a) immediately before the appointment—
    - (i) held the office of sheriff principal or sheriff, and
    - (ii) had held office as either sheriff principal or sheriff throughout the period of 5 years immediately preceding the appointment, or
  - (b) at the time of appointment—
    - (i) is a solicitor having a right of audience in the Court of Session or the High Court of Justiciary under section 25A of the Solicitors (Scotland) Act 1980 (rights of audience), and
    - (ii) has been such a solicitor throughout the period of 5 years immediately preceding the appointment.
- (2) Subsection (1) does not affect an individual's qualification for appointment as a judge of the Court of Session by virtue of article xix of the Union with England Act 1707.

## 20B Temporary judges

- (1) The Scottish Ministers may appoint an individual to act as a judge of the Court of Session; and an individual so appointed is to be known as a “temporary judge”.
- (2) An individual appointed under subsection (1) may also, by virtue of the appointment, act as a judge of the High Court of Justiciary.
- (3) The Scottish Ministers may appoint an individual under subsection (1) only if—
  - (a) the individual is qualified for appointment as a judge of the Court of Session, and
  - (b) the Scottish Ministers have consulted the Lord President before making the appointment.
- (4) Subject to section 20C, an appointment as a temporary judge lasts for 5 years.

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- (5) Subject to subsection (6), an individual appointed under subsection (1) is, while acting as a judge of the Court of Session or the High Court of Justiciary, to be treated for all purposes as a judge of that Court and may exercise the jurisdiction and powers that attach to that office.
- (6) Such an individual is not to be treated as a judge of the Court of Session for the purposes of any enactment or rule of law relating to—
  - (a) the appointment, tenure of office, retirement, removal or disqualification of judges of that Court (including, without limiting that generality, any enactment or rule of law relating to the number of judges who may be appointed),
  - (b) the remuneration, allowances or pensions of such a judge.
- (7) The appointment of an individual under subsection (1) does not affect—
  - (a) any appointment of the individual as a sheriff principal or sheriff, or
  - (b) the individual's continuing with any business or professional occupation not inconsistent with the individual acting as a judge.

## **20C Reappointment of temporary judges**

- (1) A temporary judge whose appointment comes to an end by virtue of the expiry of the 5 year period mentioned in section 20B(4) is to be reappointed unless—
  - (a) the temporary judge declines reappointment,
  - (b) the Lord President has made a recommendation to the Scottish Ministers against the reappointment, or
  - (c) the temporary judge has sat for fewer than 50 days in total in that 5 year period.
- (2) Section 20B (apart from subsection (3)) applies to a reappointment under subsection (1) as it applies to an appointment.
- (3) A temporary judge whose appointment comes to an end by resignation under section 20D may be reappointed.
- (4) Section 20B applies to a reappointment under subsection (3) as it applies to an appointment.

## **20D Cessation of appointment of temporary judges**

- (1) A temporary judge may resign at any time by giving notice to that effect to the Scottish Ministers.
- (2) An individual's appointment as a temporary judge ends—
  - (a) when the individual resigns in accordance with subsection (1),
  - (b) when the individual retires from office, or
  - (c) if the individual is removed from office as such under section 39 (temporary judges: removal from office).

## **20E Re-employment of former Court of Session and Supreme Court judges**

- (1) The Lord President may appoint a qualifying former judge to act as a judge of the Court of Session.

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- (2) An individual appointed under subsection (1) may also, by virtue of the appointment, act as a judge of the High Court of Justiciary.
- (3) An individual so appointed may act as a judge only during such periods or on such occasions as the Lord President may determine.
- (4) The Lord President may make an appointment under subsection (1) only if it appears to the Lord President to be expedient as a temporary measure in order to facilitate the disposal of business in the Court of Session or the High Court of Justiciary.
- (5) A “qualifying former judge” is an individual who—
  - (a) has ceased to hold the office of—
    - (i) judge of the Court of Session other than by virtue of section 95(6) of the Scotland Act 1998, or
    - (ii) Justice of the Supreme Court or President or Deputy President of that Court and who, at the time of being appointed to the office in question, was eligible for appointment as a judge in the Court of Session, and
  - (b) has not reached the age of 75.

## **20F Re-employment of former judges: further provision**

- (1) Subject to subsection (2), an individual's appointment under section 20E(1) lasts until recalled by the Lord President.
- (2) An individual's appointment under section 20E(1) ceases when the individual reaches the age of 75.
- (3) Despite the ending of an individual's appointment under section 20E(1)—
  - (a) the individual may continue to deal with, give judgment in or deal with an ancillary matter relating to, a case begun before the individual while acting under that appointment,
  - (b) so far as necessary for that purpose, and for the purpose of any subsequent proceedings arising out of the case or matter, the individual is to be treated as acting or, as the case may be, having acted under that appointment.
- (4) Subject to subsection (5), an individual appointed under section 20E(1) is, while acting as a judge of the Court of Session or the High Court of Justiciary, to be treated for all purposes as a judge of that Court and may exercise the jurisdiction and powers that attach to that office.
- (5) Such an individual is not to be treated as a judge of the Court of Session for the purposes of any enactment or rule of law relating to—
  - (a) the appointment, tenure of office, retirement, removal or disqualification of judges of that Court (including, without limiting that generality, any enactment or rule of law relating to the number of judges who may be appointed),
  - (b) the oaths to be taken by such judges,
  - (c) the remuneration, allowances or pensions of such a judge.



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## **20G Remuneration and expenses of temporary and former judges**

- (1) The Scottish Courts and Tribunals Service (“the SCTS”) is to pay to an individual appointed under section 20B(1) or 20E(1) such remuneration as the Scottish Ministers may determine.
- (2) The Scottish Ministers may determine different amounts of remuneration for—
  - (a) different individuals so appointed, or
  - (b) different descriptions of individuals so appointed.
- (3) The SCTS may pay to an individual appointed under section 20B(1) or 20E(1) such sums as it may determine in respect of expenses reasonably incurred by the individual in the performance of, or in connection with, the individual's duties.
- (4) The SCTS may—
  - (a) determine the circumstances in which such sums may be paid, and
  - (b) determine different circumstances for different individuals.]

*Sheriffs principal, sheriffs and part-time sheriffs*

## **<sup>F6</sup>24 Appointment of temporary sheriffs principal**

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### **Textual Amendments**

**F6** Ss. 24-26 repealed (1.4.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [Sch. 5 para. 9\(2\)\(a\)](#); S.S.I. 2015/77, art. 2(2)(3), Sch.

## **<sup>F6</sup>25 Re-employment of retired sheriffs principal and sheriffs**

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### **Textual Amendments**

**F6** Ss. 24-26 repealed (1.4.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [Sch. 5 para. 9\(2\)\(a\)](#); S.S.I. 2015/77, art. 2(2)(3), Sch.

## **<sup>F6</sup>26 Appointment of part-time sheriffs**

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### **Textual Amendments**

**F6** Ss. 24-26 repealed (1.4.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [Sch. 5 para. 9\(2\)\(a\)](#); S.S.I. 2015/77, art. 2(2)(3), Sch.

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## **27 Sheriffs and part-time sheriffs: official oaths**

In the Promissory Oaths Act 1868 (c. 72), in the second part of the Schedule (persons to take oath of allegiance and judicial oath), after “sheriffdoms,” insert “ sheriffs, part-time sheriffs ”.

**Status:**

Point in time view as at 01/04/2015.

**Changes to legislation:**

There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008, Chapter 3.